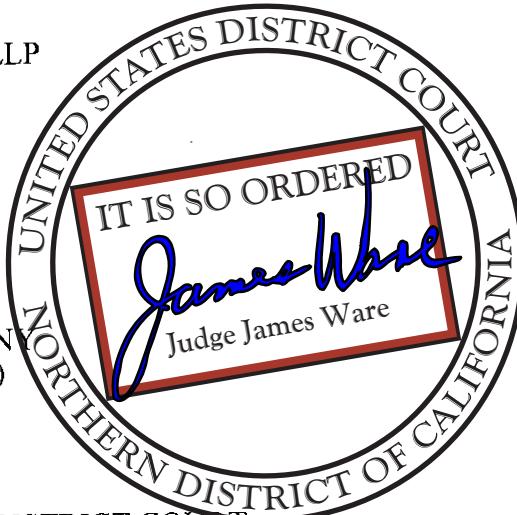


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3 ROBERT N. BERG (Bar No. 99319)
4 One Market Plaza, Steuart Tower, 8th Floor
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8 Attorneys for Defendant
9 REPUBLIC WESTERN INSURANCE COMPANY
10 (Improperly Sued as Republic Western Insurance)



8 UNITED STATES DISTRICT COURT
9
10 NORTHERN DISTRICT OF CALIFORNIA

11 LAW ENFORCEMENT TRAINING
12 AND RESEARCH ASSOCIATES,
13 INC., JEFFREY A. SCHWARTZ, and
14 CYNTHIA BARRY,

15 Plaintiffs,

16 v.

17 REPUBLIC WESTERN
18 INSURANCE, CNA REINSURANCE
19 COMPANY, and DOE 1-DOE 50,

20 Defendants.

21 CASE NO. CV 05-04256 JW

22 STIPULATION THAT DEFENDANT
23 REPUBLIC WESTERN INSURANCE
24 COMPANY MAY FILE FIRST-AMENDED
25 ANSWER TO COMPLAINT

26 RECITALS

27 WHEREAS Defendant Republic Western Insurance Company ("Republic") filed its
28 Answer to the Complaint on October 21, 2005;

29 WHEREAS Republic desires to amend its Answer to assert three additional affirmative
30 defenses: A fourteenth affirmative defense (that the insured was not acting in an insured capacity
31 when the claimed damage occurred), a fifteenth affirmative defense (that damage resulting from
32 the insured's work product is excluded from coverage) and a sixteenth affirmative defense (that
33 bodily injury or property damage resulting from mold contamination is excluded from coverage);

34 WHEREAS Plaintiffs and Republic desire to avoid unnecessary law and motion
35 proceedings and promote the efficient administration of justice;

36 **SEDGWICK**
37 DETERT, MORAN & ARNOLD LLP

1 WHEREAS, pursuant to Federal Rule of Civil Procedure 15(a), Plaintiffs, as the adverse
2 party, consent to the filing of the proposed First-Amended Answer attached hereto as Exhibit A.

3 STIPULATION

4 IT IS HEREBY STIPULATED by and between Plaintiffs and Republic, through their
5 respective counsel, that Defendant Republic Western Insurance Company may file its proposed
6 First-Amended Answer upon issuance of an Order of the Court.

7 DATED: February 6, 2006

AUNE & ASSOCIATES

8
9 By 

10 ROBERT E. AUNE
11 Attorneys for Plaintiffs
12 LAW ENFORCEMENT TRAINING AND
13 RESEARCH ASSOCIATES, INC.; JEFFREY
14 A. SCHWARTZ; and CYNTHIA BARRY

15 DATED: January 31, 2006

SEDGWICK, DETERT, MORAN & ARNOLD LLP

16
17 By 

18 BRUCE D. CELEBREZZE
19 ROBERT N. BERG
20 Attorneys for Defendant
21 REPUBLIC WESTERN
22 INSURANCE COMPANY

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28 SEDGWICK
DETERT, MORAN & ARNOLD LLP

EXHIBIT A

1 SEDGWICK, DETERT, MORAN & ARNOLD LLP
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10 REPUBLIC WESTERN INSURANCE COMPANY
11 (Improperly Sued as Republic Western Insurance)

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 LAW ENFORCEMENT TRAINING AND) Case No. CV 05-04256 JW
2 RESEARCH ASSOCIATES, INC.,)
3 JEFFREY A. SCHWARTZ, and) FIRST-AMENDED ANSWER OF
4 CYNTHIA BARRY,) DEFENDANT REPUBLIC WESTERN
5 Plaintiffs,) INSURANCE COMPANY TO
6 v.) COMPLAINT OF LAW ENFORCEMENT
7) TRAINING AND RESEARCH
8) ASSOCIATES, INC., ET AL.
9 REPUBLIC WESTERN INSURANCE,)
10 CNA REINSURANCE COMPANY, and)
11 DOE 1-DOE 50,)
12 Defendants.)

13 COMES NOW defendant Republic Western Insurance Company ("Republic") and for a
14 first-amended answer to the complaint of plaintiffs Law Enforcement Training and Research
15 Associates, Inc., et al. ("LETRA") states as follows:

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GENERAL ALLEGATIONS

1. Republic does not have sufficient information or belief in order to form a
2 belief as to the truth of the averments contained in paragraphs 1, 2, 3, 4, 5, and 6.
3. Republic admits the averments in paragraph 7 of the complaint.
4. Republic does not have sufficient information to form a belief as to the
5 averments contained in paragraph 8, 9, 10, and 11 of the complaint.

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1 4. Republic denies the averments in paragraph 12 of the complaint.

2 5. Republic admits the underlying action attached as Exhibit A to LETRA's
3 complaint was filed in Santa Clara County Superior Court and that a copy of the complaint has
4 been attached.

5 6. Republic does not have sufficient information or belief as to the
6 allegations in paragraph 13.

7 7. Republic admits, as to paragraphs 14 and 15, that it issued a liability
8 policy to Roof Max, Inc. Republic admits the policy included provisions regarding defending its
9 insureds under various circumstances. Republic does not have sufficient information or belief as
10 to the truth of the averments contained in the remainder of the paragraph.

11 8. Republic does not have sufficient information in order to form a belief as
12 to the truth of the averments contained in paragraph 16 of the complaint.

13 9. Republic admits that at some point in time it received a tender of defense
14 regarding the underlying lawsuit. Republic does not have sufficient information to form a belief
15 as to the truth of the remaining averments contained in paragraph 17.

16 10. Republic does not have sufficient information in order to form a belief as
17 to the truth of the averments contained in paragraph 18 and 19 of the complaint. Republic denies
18 any contractual breach.

19 11. Republic admits the averments in paragraph 20.

20 12. Republic admits as to paragraph 21 that it retained the law firm of Low,
21 Ball & Lynch to defend its insured. Republic does not have sufficient information at this time to
22 admit the remaining averments pertaining to the chronology of events.

23 13. Republic admits that it provided a defense to the insured and subsequently
24 withdrew from the defense. Republic does not have sufficient information regarding the specific
25 chronology of the averments in paragraph 22 at this point in time.

26 14. Republic admits the averments in paragraph 23 of the complaint.

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15. Republic does not have sufficient information to form a belief as to the truth of the allegations in paragraph 24 and 25, and on that basis denies the allegations and averments.

16. Republic admits that there are attachments to the present complaint, which, if properly verified would speak for themselves. Republic has no further information to form a belief as to the truth of the averments set forth in paragraph 26.

17. Republic denies the allegations in paragraph 27.

18. Republic does not have sufficient information to form a belief as to the truth of the averments in paragraph 28.

19. Republic admits that at some point in time it received notice of the underlying trial. Republic does not have sufficient information to form a belief as to the truth of the averments in the remaining allegations of paragraph 29.

20. Public does not have specific information regarding the allegations in paragraph 30 of the complaint. Republic does admit that there is an attachment to the complaint herein which states to be a judgment, but does not have specific information of its own at this time to admit or deny said allegation.

FIRST CAUSE OF ACTION

21. Paragraph 31 of the complaint does not require a response from this responding defendant, but Republic incorporates in prior responses.

22. Republic does not have sufficient information to form a belief as to the truth of the averments in paragraph 32 of the complaint.

23. Republic admits that it initially provided a defense to its insured. Republic denies the remaining allegations in paragraph 33.

24. Republic admits that it initially provided a defense to its insured in the underlying suit. Republic denies all other averments in paragraph 34 of the complaint.

25. Republic denies the allegations in paragraphs 35, 36, 37, and 38 as they apply to Republic.

SECOND CAUSE OF ACTION

26. Republic incorporates its prior responses to these paragraphs.

27. As respects to the allegations pertaining to Republic, defendant Republic denies the averments in paragraphs 40, 41, 42, 43, and 44.

THIRD CAUSE OF ACTION

28. Republic incorporates its prior responses to these paragraphs.

29. As respects to the allegations pertaining to Republic, Republic denies the allegations set forth in paragraphs 46, 47, 48, and 49.

FOURTH CAUSE OF ACTION

30. Republic incorporates its responses to these paragraphs.

11 31. As respects to Republic, defendant Republic denies that plaintiffs are
12 entitled to their requested declarations and relief set forth in paragraphs 51, 52, and 53.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

15 32. Republic alleges that the complaint fails to state facts sufficient to
16 constitute a cause of action against it.

SECOND AFFIRMATIVE DEFENSE

THIRD AFFIRMATIVE DEFENSE

21 34. To the extent that plaintiffs have failed to mitigate, minimize, or avoid
22 damages they allegedly sustained, any recovery against Republic must be reduced accordingly.

FOURTH AFFIRMATIVE DEFENSE

26 | //

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FIFTH AFFIRMATIVE DEFENSE

36. Plaintiffs have not suffered any damages as the result of the actions taken by Republic, and plaintiffs are thus barred from asserting the averments in their complaint.

SIXTH AFFIRMATIVE DEFENSE

37. Republic alleges that its coverage analysis and claims handling were and are reasonable as a matter of law and were not inherently unreasonable as a matter of law.

SEVENTH AFFIRMATIVE DEFENSE

38. Republic alleges that the complaint and each cause of action contained therein fails to state facts sufficient to constitute a valid claim for attorneys' fees.

EIGHTH AFFIRMATIVE DEFENSE

39. Based on the assignment and covenant not to execute, Republic asserts that plaintiff did not suffer any damage whatsoever and is not entitled to the relief requested.

NINTH AFFIRMATIVE DEFENSE

40. Republic states that any action based on Insurance Code § 11580 is based on the trial record alone, which is insufficient here to trigger insurance coverage under the Republic policy.

TENTH AFFIRMATIVE DEFENSE

41. The damages in question took place prior to inception of the Republic policy. The Republic policy is limited to "property damage" occurring during the effective dates of coverage. Accordingly, coverage does not apply.

ELEVENTH AFFIRMATIVE DEFENSE

42. The Republic policy contains an exclusion which precludes coverage with respect to damages and injuries known prior to inception of the Republic policy. Since the water leaks were known prior to inception of the Republic policy, coverage does not apply.

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TWELFTH AFFIRMATIVE DEFENSE

43. Since damages and injuries were known prior to the inception date of the
 3 Republic policy, no damage has taken place within the Republic policy that would result from an
 4 occurrence.

THIRTEENTH AFFIRMATIVE DEFENSE

44. The injuries and damages being claimed were caused by entities other than
 7 those insured by Republic, and thus the judgment would not involve liability to an insured
 8 covered under the Republic policy.

FOURTEENTH AFFIRMATIVE DEFENSE

45. The Republic policy insured Roof Max, Inc., a corporation, and its
 11 executive officers and directors with respect to their duties performed as officers and directors of
 12 the corporation. The injuries and damages being claimed occurred before Roof Max was
 13 incorporated, and/or were caused by its officers and directors while not acting in such capacity.
 14 Thus, the damages being claimed would not be covered.

FIFTEENTH AFFIRMATIVE DEFENSE

46. The Republic policy contains an exclusion which precludes coverage for
 17 "property damage" to the particular parts of real property on which the insured is performing
 18 operations, if the damage results from those operations. The Republic policy also precludes
 19 coverage to the particular parts of any property that must be restored, repaired or replaced
 20 because the insured incorrectly performed work on it. Thus, the damage to the roof of the
 21 building at 2898 Joseph Avenue in Campbell, California, would not be covered.

SIXTEENTH AFFIRMATIVE DEFENSE

47. The Republic policy contains an exclusion precluding coverage for
 23 "bodily injury" or "property damage" arising out of or contributed to by the presence of mold,
 24 fungus or other microbial contamination. Thus, bodily injury and property damage resulting
 25 from mold contamination to the building at 2898 Joseph Avenue in Campbell, California, would
 26 not be covered.

28
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DETERT, MORAN & ARNOLD LLP

SEVENTEENTH AFFIRMATIVE DEFENSE

48. Republic alleges that plaintiffs have failed to set forth their claims with sufficient particularity to permit Republic to raise all appropriate affirmative defenses and thus Republic reserves its rights to add additional affirmative defenses for these claims as they become known.

PRAYER

WHEREFORE, defendant Republic prays for judgment as follows:

1. That plaintiffs take nothing by reason of the Complaint;
2. That judgment be entered in favor of Republic;
3. For a declaration that Republic has no liability to plaintiffs for the damages alleged herein;
4. For costs of suit incurred herein; and
5. For such other and further relief the Court deems just and proper.

Dated: February 14, 2006

SEDGWICK, DETERT, MORAN & ARNOLD, LLP

By

ROBERT N. BERG
BRUCE D. CELEBREZZE
Attorneys for Defendant
REPUBLIC WESTERN INSURANCE
COMPANY (Improperly Sued as Republic
Western Insurance)

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, defendant Republic Western Insurance Company hereby demands a trial by jury.

Dated: February 14, 2006

SEDGWICK, DETERT, MORAN & ARNOLD, LLP

Bw

ROBERT N. BERG
BRUCE D. CELEBREZZE
Attorneys for Defendant
REPUBLIC WESTERN INSURANCE
COMPANY (Improperly Sued as Republic
Western Insurance)

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

LAW ENFORCEMENT TRAINING
AND RESEARCH ASSOCIATES,
INC., JEFFREY A. SCHWARTZ, and
CYNTHIA BARRY,

Plaintiffs,

v.
REPUBLIC WESTERN
INSURANCE, CNA REINSURANCE
COMPANY, and DOE 1-DOE 50,

Defendants.

CASE NO. CV 05-04256 JW

[PROPOSED] ORDER ALLOWING
DEFENDANT REPUBLIC WESTERN
INSURANCE COMPANY TO FILE FIRST-
AMENDED ANSWER TO COMPLAINT

PURSUANT TO STIPULATION of Plaintiffs and Defendant Republic Western
Insurance Company,

IT IS HEREBY ORDERED that Defendant Republic Western Insurance Company may
file its First-Amended Answer to the Complaint.

DATED: February 17, 2006



James W. Hare
UNITED STATES DISTRICT JUDGE

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